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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/629,407	08/01/2000	Allan Rosencwaig	TWI-10820	6057

7590 05/08/2003

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EXAMINER

SONG, HOON K

ART UNIT

PAPER NUMBER

2882

DATE MAILED: 05/08/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/629,407	ROSEN CWAIG ET AL.
Examiner	Art Unit	
Hoon K Song	2882	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(h).

### Status

1)  Responsive to communication(s) filed on 24 February 2003 .

2a)  This action is **FINAL**.                    2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1-31 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-8, 10-18, 20-27 and 29-31 is/are rejected.

7)  Claim(s) 9, 19 and 28 is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)  The proposed drawing correction filed on 24 February 2003 is: a)  approved b)  disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.

12)  The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

14)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a)  The translation of the foreign language provisional application has been received.

15)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)      4)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)      5)  Notice of Informal Patent Application (PTO-152)  
3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s)      6)  Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-8, 10-18, 20-27 and 29-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Koppel (US 5619548).

Regarding claims 1, 11, 20 and 29, Koppel teaches a method and apparatus (figure 2) comprising:

Generating a probe (55) beam of X-rays (31);

Directing (37) the probe beam onto the surface of the wafer such that the spot size of the probe beam is large relative to the feature size of the pattern on said surface of said patterned wafer;

Measuring the intensity of various X-rays as reflected from the wafer to generate reflectivity data (column 5 line 37+); and

Analyzing the reflectivity data to determine characteristics of the thin film layers (abstract).

However Koppel merely teaches that the spot size of the probe beam is large relative to the feature size of the pattern on the surface of the patterned wafer.

Although Koppel fails to teach the patterned wafer and larger probe size beam, the applicant admitted that prior art teaches that the probe size is much bigger than feature size of the pattern (millimeter vs. micro-meter). Thus, one having ordinary skill in the art would notice that Koppel's probe beam would be larger probe size beam than the pattern.

Furthermore measuring patterned wafer, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. In this case the applicant fails to describe structural limitation or method of measuring pattered wafer. Accordingly, since Koppel teaches identical measuring apparatus of present invention, one having ordinary skill in the art would be motivated to use Koppel's apparatus to measure any kind of substrate because it would measure the properties i.e. thickness, of the measuring substrate (abstract).

Regarding claims 2, 12 and 21, Koppel teaches that the characteristics include thin film layer thickness (abstract).

Regarding claim 3-6, 13-16 and 22-25, Koppel teaches about detectors (figure 2).

Regarding claims 7, 17 and 26, Koppel teaches the directing step (figure 2).

Regarding claims 8, 18, 27 and 30, Koppel teaches that the analyzing the reflectivity data step includes applying a Fourier transform (well known figure 6, 7).

Regarding claims 10 and 31, Koppel teaches that the reflectivity data includes data measuring reflected x-ray intensity as a function of angle of incidence (figure 4).

#### ***Allowable Subject Matter***

Claims 9, 19 and 28 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: None of the prior art teaches or suggests that the analyzing the reflectivity data step includes applying a transform function to the reflectivity data and further wherein the transform function is chosen based on a comparison of the reflectivity data with x-ray reflectivity data corresponding to measurements made on an unpatterned region of a semiconductor wafer (figure 2, column 6 line 48+).

#### ***Response to Arguments***

Applicant's arguments with respect to claims 1-31 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hoon K Song whose telephone number is 703-308-2736. The examiner can normally be reached on 8:30 AM - 5 PM, Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Kim can be reached on 703-305-3492. The fax phone numbers for the organization where this application or proceeding is assigned are 703-746-4858 for regular communications and 703-308-7724 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0956.

Hoon Song  
May 1, 2003



DAVID V. BRUCE  
PRIMARY EXAMINER